

R. v. Eagle, 2002 NWTSC 39

S-1-CR2001/112

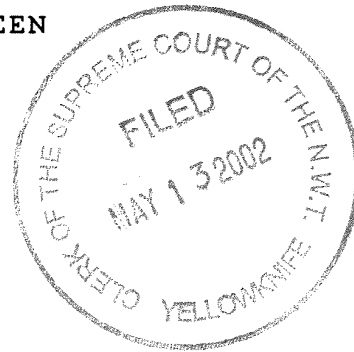
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

FRANCIS JOHN EAGLE



Transcript of the Oral Reasons for Sentence by The Honourable Justice V.A. Schuler, at Yellowknife in the Northwest Territories, on May 2nd A.D., 2002.

APPEARANCES:

Mr. S. Niblock:

Counsel for the Crown

Mr. P. Smith:

Counsel for the Accused

1 THE COURT: Mr. Eagle has pleaded guilty to
2 two counts in the Indictment before me and has now
3 been convicted on those counts. One is the offence
4 of assault with a weapon, being a handgun, and he is
5 convicted as a party to that offence and then also
6 assault with a weapon, being a knife, in which he is
7 the principal actor.

8 Just very briefly for the record, the facts are
9 that the victim of the offence had apparently taken
10 some cocaine from Mr. Warner and had used it. Mr.
11 Warner obviously found out about that somehow and
12 the next day he and Mr. Eagle, who were sitting
13 drinking and smoking marijuana with the victim,
14 committed this assault on the victim.

15 Now, I have to say, and I am not going to take
16 this very far because it certainly isn't set out
17 very clearly in the Agreed Statement of Facts, but
18 there is a flavour here that there may have been
19 some planning put into this. I am not going to treat
20 that as an aggravating factor because it isn't
21 clearly set out but it certainly is something that
22 strikes me when I read these facts.

23 In any event, it appears that what happened was
24 that Mr. Warner asked the victim whether he had
25 smoked any cocaine the night before, the victim said
26 no, Mr. Warner lunged at him and knocked him to the
27 floor.

1 Now, the assault itself, as I see it, when one
2 person assaults another and a third person assists
3 by holding that other person down, I don't see a
4 very great difference in the degree of
5 responsibility between the two people involved in
6 the assault. It's true that Mr. Eagle didn't produce
7 the gun, it was Mr. Warner who produced the gun, or
8 the replica BB gun, but without Mr. Eagle holding
9 down the victim, Mr. Warner no doubt would not have
10 been able to do everything that he did. So I really
11 don't see that there is a large degree of difference
12 in their participation.

13 Once Mr. Warner was involved in beating the
14 victim with the handgun, beating him about the head
15 and face with the handgun, the victim then
16 apparently was able to grab a knife, which was
17 nearby, and Mr. Eagle told him to let go of the
18 knife or he would hurt him and then grabbed the
19 knife from him and pushed him down using the knife
20 and held him down with the knife while Mr. Warner
21 continued beating him.

22 In those circumstances, it seems to me that
23 this is very different from the kind of situation
24 where maybe there is a consensual fight or
25 altercation going on and one party grabs a knife. In
26 this case, the victim was already down, he was being
27 beaten, he grabbed the knife, I would say obviously

1 on these facts to try to protect himself with it,
2 and Mr. Eagle took it from him and used it to
3 continue the assault and to help Mr. Warner continue
4 the assault. So I have to say that on the facts, I
5 really don't see that there is a great degree of
6 difference in the level of participation as between
7 Mr. Eagle and Mr. Warner.

8 The only thing that Mr. Eagle didn't do is he
9 didn't actually produce the gun. So to that extent I
10 suppose that it could be said that he has somewhat
11 less responsibility but I really don't see it as
12 being a great deal of difference or something that
13 would make a huge difference in the sentence to be
14 imposed.

15 Obviously from the photographs that have been
16 entered, it was a serious beating on the victim. The
17 facts don't reveal whether he got any medical
18 treatment or needed any kind of medical attention
19 but it's a serious beating, perhaps not among the
20 most severe that unfortunately we sometimes see in
21 court, but I would conclude from the fact that at
22 one point he was bleeding heavily from inside his
23 left ear that there were some fairly serious results
24 to him.

25 Now, in terms of Mr. Eagle, I have been advised
26 that he is 28 years old. He has apparently done well
27 enough at work, his painting work, in the past that

1 his employer is prepared to hire him again. He has
2 had a difficult background, there doesn't seem to be
3 any doubt about that. He has what is, I think by any
4 description, a terrible record going back to 1990.

5 Now, when I look at the record closely, I do
6 note that he has not, other than on one occasion,
7 been sentenced to very lengthy terms of
8 incarceration. Most of his incarceration seems to
9 be in the 30 day to three month range so I take it
10 that perhaps some of these offences weren't at the
11 very serious end of the scale. Much of the record is
12 for property offences and also for breaching various
13 court orders, probation orders, recognizances.

14 The convictions that are related are in 1993,
15 pointing a firearm, for which he received three
16 months and 14 days it looks like. Also in 1996,
17 assault with a weapon for which he received 18
18 months and that's the longest sentence that he has
19 received. 1998, spousal assault causing bodily harm
20 for which he received a \$400 fine. So it's the kind
21 of record that to me, when one looks at it
22 carefully, it is made up of mostly what are not very
23 serious offences but it is obviously the length of
24 the record that is of concern. Mr. Eagle has been in
25 trouble with the law, been in court, continually
26 over the past 12 years up to today.

27 Now, he is still fairly young, he is 28 years

1 old, but he is inching up there in age and at some
2 point, if he doesn't make a complete break with the
3 way that he has been acting in the past, nobody is
4 going to give him a chance. I don't doubt that he
5 has plans, that he has things that he would like to
6 do. He would like to have his own business one day
7 and hopefully, keeping that in mind, will encourage
8 him to change his life around because unfortunately,
9 if it continues this way, he may have trouble
10 starting a business or getting a job simply because
11 of this record and it may be very difficult, and in
12 fact I would expect it would be difficult for people
13 to trust him simply because of the number of
14 convictions that he has accumulated in the past, the
15 number of times that he has been in trouble with the
16 law.

17 I do take into account the guilty plea. It does
18 not come at an early date and the victim of the
19 assault did have to testify at the preliminary
20 hearing however it does save him from having to
21 testify again at a trial and so I do give full
22 credit to the guilty plea. We are not on the eve of
23 trial here so it does bear a good deal of weight.

24 I take into account that Mr. Eagle has
25 indicated that he is sorry for the attack on the
26 victim. It seems to me that he is perhaps trying to
27 shift a little bit of the blame by saying if he

1 never met these people, maybe this would have never
2 happened but I am sure that Mr. Eagle realizes that
3 he has to take responsibility for what he has done
4 here and only he can take responsibility and only he
5 can change his life around.

6 As far as the remand time goes, I have to say
7 that I have a great deal of trouble with crediting
8 time served on another offence, even if it was in
9 remand, to this offence. To me that just isn't
10 appropriate. It is completely different from the
11 situation where someone is detained in custody on an
12 offence and is serving no other sentences and all of
13 their pre-trial time is the result of being detained
14 on the particular offence, in my view it makes sense
15 then to take that into account when the person is
16 being sentenced. But to take into account time that
17 actually is a sentence for other offences, in my
18 view is not an appropriate way to treat pre-trial
19 custody or to think of pre-trial custody. And that,
20 in my view, is a reason for not treating Mr. Eagle's
21 pre-trial time the same way that Mr. Warner's was
22 apparently treated.

23 Stand up, please, Mr. Eagle.

24 Mr. Eagle in all of the circumstances and
25 taking into account everything that I have said and
26 everything that has been put before me, the sentence
27 that I impose is as follows: You are sentenced to a

1 term of incarceration of three years on Count 1 and
2 3 years concurrent on Count 4, so that's a total
3 sentence of three years.

4 There will be a firearm prohibition order in
5 the usual terms commencing today and expiring ten
6 years from your release from imprisonment on this
7 sentence.

8 And there will also be a DNA order. I am
9 satisfied that it is in the interest of the
10 administration of justice to make that order in
11 these circumstances. Do you have a draft order?

12 MR. NIBLOCK: Yes, I do, Your Honour.

13 THE COURT: Do you want to hand it up now
14 then? You can have a seat then Mr. Eagle.

15 Have had a chance to look at the order,
16 Mr. Smith?

17 MR. SMITH: I have, Your Honour, thank you.

18 THE COURT: And you are satisfied with it?

19 MR. SMITH: Yes.

20 THE COURT: All right, that order will issue
21 then.

22 Is there anything further?

23 The Victims of Crime surcharge will be waived
24 in the circumstances.

25 MR. SMITH: I am not sure if the other
26 charges were actually formally stayed.

27 MR. NIBLOCK: I would direct that the other

1 charges be stayed.

2 THE CLERK: 2, 3, and 5?

3 MR. NIBLOCK: Yes.

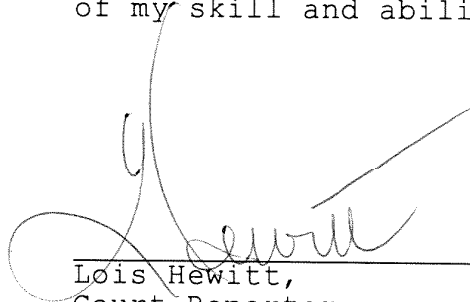
4 THE CLERK: Thank you.

5 THE COURT: All right, thank you, counsel,
6 and we will close court.

7 (AT WHICH TIME THE REASONS FOR SENTENCE CONCLUDED)

8 Certified correct to the best
9 of my skill and ability,

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Lois Hewitt,
Court Reporter